ROSELYN ISAAC
(ON RECONSIDERATION)

IBLA 75-437 Decided March 25, 1981

Petition for reconsideration of a Board decision affirming the rejection of Native allotment application F-13040.

Petition for reconsideration granted; Roselyn Isaac, 23 IBLA 124 (1975), sustained.

1. Alaska: Native Allotments

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsection (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970).

2. Administrative Procedure: Adjudication -- Administrative Procedure: Hearings -- Alaska: Native Allotments -- Hearings -- Rules of Practice: Hearings

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

APPEARANCES: Carmen L. Massey, Esq., Fairbanks, Alaska, for appellant; James N. Reeves, Assistant Attorney General, for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Roselyn Isaac has petitioned for reconsideration of our decision in Roselyn Isaac, 23 IBLA 124 (1975), in which we affirmed the rejection of her Native allotment application, F-13040, and denied her request for a hearing. The application on its face stated that qualifying use and occupancy were not initiated until November 1961. As this was a date after a State selection application had been filed for the land, we held that the Native allotment application must be rejected as a matter of law. Appellant petitioned for reconsideration of our decision after the court in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), held that a hearing was required where the Department proposed to reject a Native allotment application.

While this petition was pending, Congress enacted the Alaska National Interests Lands Conservation Act, P.L. 96-487, 94 Stat. 2371 (1980), which has a provision concerning Alaska Native allotments. It is therefore appropriate that we initially determine whether this provision affects the adjudication of this case.

[1] Section 905(a)(1) of that statute approved all Native allotment applications pending before the Department on or before December 18, 1971, which described either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve in Alaska subject to valid existing rights, except where otherwise provided by other subsections of that section. Subsection 905(a)(4), addresses the adjudication of Native allotment applications which conflict with State selection applications. That subsection provides in pertinent part:

> [W]here an allotment application describes land * * * which on or before December 18, 1971, was validly selected by or tentatively approved or confirmed to the State of Alaska pursuant to the Alaska Statehood Act and was not withdrawn pursuant to section 11(a)(1)(A) of the Alaska Native Claims Settlement Act from those lands made available for selection by section 11(a)(2) of the Act by any Native Village certified as eligible pursuant to section 11(b) of such Act [i.e., a "core" township selection by an eligible Native village 1/], paragraph (1) of this subsection and subsection (d) of this section shall not apply and the application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, the Alaska Native Claims Settlement Act, and other applicable law.

1/ Section 11(a)(1)(A) of ANCSA, 43 U.S.C. § 1610(a)(1)(A) (1976), withdrew "the lands in each township that encloses all or part of any Native village identified pursuant to subsection (b) of this section."

> The Senate report explains this provision as follows:
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> > [E]xcluded from the general approval [under subsection 905(a)(1)] are applied-for allotments which described lands selected by or tentatively approved to the State of Alaska on or before December 18, 1971. Applications for allotments in "core" townships of villages certified as eligible for land selections under Section 11(b) of the Alaska Native Claims Settlement Act are, however, subject to the statutory approval contained in subsection (a)(1) notwithstanding a State selection or tentative approval of such core township lands prior to December 18, 1971.
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> S. Rep. No. 96-413, 96th Cong., 2nd Sess. 285, reprinted in [1981] U.S. Code Cong. & Ad. News 9130, 9289.

Appellant's application is for land in sec. 30, T. 20 N., R. 11 E., Copper River meridian, which is outside the core township for the Native village of Tanacross, T. 19 N., R. 11 E., Copper River meridian. Thus, because a State selection application has been filed for the land included in the allotment application, and the land is not within the core township of a Native village, the allotment is not approved by Congress and must be adjudicated pursuant to the provisions of the Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976). 2/

2/ We note that section 905(a)(4) of the Alaska National Interest Lands Conservation Act requires adjudication pursuant to the Alaska Native Allotment Act rather than confirmation of title under section 905(a)(1) where the land in the Native allotment application describes land which was "validly selected" by the State of Alaska. Because the word "validly" qualifies the word "selected," one may argue that the State selection application must be adjudicated as to its validity or invalidity before it is determined that the Native allotment application was not approved under section 905(a)(1). Such an argument should not be accepted because it places too much emphasis on the word "validly" and contravenes the intention in subsections (a)(1) and (e). For example, subsection (a)(1) requires that the land applied for be unreserved on December 13, 1968. The land in the instant case, however, was segregated from entry by the filing of the State selection application in May 1961. Subsection (e) provides that entries which conflict with allotment applications must be adjudicated prior to issuing a certificate for an allotment, but State selections are expressly excluded from this provision. Therefore, it is clear that State selection applications need not be adjudicated before conflicting Native allotment applications. Furthermore, the Senate report quoted in the text of this opinion places no special emphasis on the validity of the selection application.

[2] An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State's selection application was filed for the land. See Andrew Petla, 43 IBLA 186 (1979). In our previous decision in this appeal, we had noted that appellant had been informed of this fact by BLM. Appellant at no time has alleged use prior to November 1961, and there is no dispute as to the date on which the alleged occupancy was initiated. The application must be rejected because a State selection application was filed the previous May. Even where a hearing would ordinarily be required by statute or other pertinent law, a well established principle of administrative law holds that no hearing is required where an application on its face establishes that it must be rejected as a matter of law. Weinberger v. Hynson, Wescott & Dunning, Inc., 412 U.S. 609 (1973). As there are no material facts in dispute and the disposition of the case is controlled exclusively by applicable law, the court's decision in Pence v. Kleppe, supra, does not require a hearing in this case. Andrew Petla, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted and our prior decision is sustained.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge